

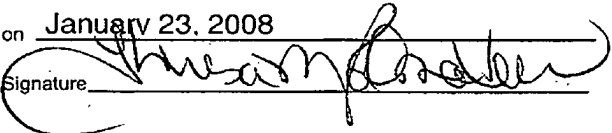

JAN 23 2008

Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
		60469-220;PA00005079-US	
CERTIFICATE OF FACSIMILE I hereby certify that this Pre-Appeal Brief Request For Review and Notice of Appeal are being facsimile transmitted to (571) 273-8300. on <u>January 23, 2008</u> Signature <u></u> Typed or printed name <u>Theresa M. Palmateer</u>		Application Number <u>10/537,384</u>	Filed <u>06/03/2005</u>
		First Named Inventor <u>Richard N. Fargo</u>	
		Art Unit <u>3651</u>	Examiner <u>Singh, Kavel</u>
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p>			
I am the		 Signature	
<input type="checkbox"/> applicant/inventor.		<u>David J. Gaskey</u> Typed or printed name	
<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)			
<input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>37,139</u>		<u>(248) 988-8360</u> Telephone number	
<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____		<u>January 23, 2008</u> Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.			
<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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JAN 23 2008

60,469-220
PA-000.05079-US**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Richard N. Fargo *et al.*
Serial Number: 10/537,384
Filed: 06/03/2005
Group Art Unit: 3651
Examiner: Singh, Kavel
Title: DRIVE BELT FOR A PASSENGER CONVEYOR

REQUEST FOR PRE-APPEAL BRIEF REVIEW

Mail Stop AF
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This paper is responsive to the Final Office Action mailed on November 27, 2007. Applicant hereby requests Pre-Appeal Brief Review because there is no *prima facie* case of anticipation and no *prima facie* case of obviousness.

**The rejection under 35 U.S.C. §102
of claims 1-4, 6, 8-11, 13-16, 18, 19, 21 and 22
based upon the *Boltrek* reference should be withdrawn.**

U.S. Patent No. 3,677,388 (the *Boltrek* reference) does not anticipate any of Applicants' claims because it does not disclose a drive belt as recited in Applicants' claims.

Claim 1 is reproduced here for convenience:

1. A drive belt for a passenger conveyor, comprising:
an inner side adapted to engage a drive member; and
an outer side including a plurality of teeth that are adapted to engage a corresponding portion of a step chain, the outer side teeth each including a base and a compressible projection distal from the base.

60,469-220
PA-000.05079-US

The *Boltrek* reference cannot possibly anticipate claim 1, because there are no teeth in the *Boltrek* reference that are adapted to engage a step chain with each of those teeth including a compressible projection.

The Examiner has suggested that the teeth 13t of the step chain links 13 in the *Boltrek* reference somehow correspond to the teeth of claim 1. Applicants respectfully submit that the teeth 13t do not include a compressible projection. There is no teaching or suggestion that the step chain links 13 of the *Boltrek* reference are made of anything other than metal, as commonly known in the art. *Boltrek's* metal step chain links 13 are entirely rigid and, therefore, cannot include compressible projections. Therefore, there is no anticipation.

It is necessary to interpret the term "compressible" consistently with Applicants' use of that term in the specification in order to have a reasonable interpretation of that term. The Examiner's position that the teeth 13t extend into an annular groove 105 on the sprocket wheels of the *Boltrek* reference does not render the teeth 13t in any way compressible and does not establish a projection on those teeth that is in any way compressible. The Examiner's conclusion that because the teeth 13t are received in an annular groove 105 they are compressible does not find any support in the reference or any common understanding of the term "compressible." Moreover, Applicants' use of the term "compressible," for example, on page 4 lines 9-20, clearly indicates that "compressible" should be understood in Applicants' disclosure and claims to be consistent with something that is deformable, pliable or having some elasticity. The metal teeth 13t on the metal step chain links of the *Boltrek* reference do not teach or suggest any such characteristic. Therefore, *Boltrek* does not teach any projections that are compressible. There is no *prima facie* case of anticipation.

60,469-220
PA-000.05079-US

Aside from the reasonable interpretation of the term "compressible," and assuming *arguendo* that the teeth 13t of the step chain links 13 of *Boltrek* could possibly be reasonably construed to teach compressible projections as required by Applicants' claims, it is not possible for those teeth to engage themselves. The teeth in Applicant's claim 1 are adapted to engage a corresponding portion of a step chain. Applicant's independent claim 13 recites a step chain and a belt as individual elements. The Examiner is attempting to interpret the step chain of the *Boltrek* reference as the belt in Applicants' claims. Because, at best, the step chain links 13 of the *Boltrek* reference include teeth having concave surfaces, the step chain of the *Boltrek* cannot reasonable be considered the step chain of Applicants' claims and the separately recited drive belt of Applicants' claims that engages the step chain. The step chain of the *Boltrek* reference does not engage itself. The teeth 13t on *Boltrek's* step chain cannot be considered the same as the teeth on Applicants' recited drive belt. Therefore, it is impossible to establish a *prima facie* case of anticipation based upon the *Boltrek* reference.

**The rejection of claims 5, 7, 12, 17 and 20
under 35 U.S.C. §103 based upon the *Boltrek*
reference should be withdrawn**

As explained above, the *Boltrek* reference does not teach what the Examiner contends. It is impossible to establish a *prima facie* case of obviousness against any of Applicants' claims based upon the *Boltrek* reference. The rejection must be withdrawn.

**The rejection under 35 U.S.C. §103 of claims 23, 24 and 25
based upon the proposed combination of the *Boltrek* reference
and the *Novak* reference must be withdrawn**

While there is not much explanation in the Office Action, it appears that the Examiner proposes to change the step chain 13 of the *Boltrek* reference from a metal step chain into a urethane step chain. That modification cannot be made because it would completely interfere with

60,469-220
PA-000.05079-US

the intended operation of the *Boltrek* reference. MPEP 2143.01(V) prohibits a modification to a reference that would render it unable to perform its intended function. Metal step chains comprising metal links have been used in passenger conveyors for many years. Substituting the urethane material of the *Novak* reference in the step chain of *Boltrek* would not only have been not obvious, but it would have provided a much weaker structure and would likely not be legal from a code compliance standpoint in locations where government regulations and codes require that step chains be made from high tensile steel links with hardened pins, or from similarly strong and durable materials. One skilled in the art would not make such a substitution because it would render the step chain unable to perform its intended function. Therefore there is no *prima facie* case of obviousness and the rejection must be withdrawn.

As there is no basis for rejecting any of Applicants' claims, Applicants should not be forced to submit this case to the Board and the rejections should be withdrawn now.

Respectfully submitted,

CARLSON, GASKEY & OLDS

By: 

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Dated: January 23, 2008

CERTIFICATE OF FACSIMILE

I hereby certify that this Request for Pre-Appeal Brief Review, relative to Application Serial No. 10/537,384, is being facsimile transmitted to the Patent and Trademark Office (Fax No. (571) 273-8300) on January 23, 2008.


Theresa M. Palmateer

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